



The UN "Protect, Respect and Remedy" Framework for Business and Human Rights

Background

The debate concerning the responsibilities of business in relation to human rights became prominent in the 1990s, as oil, gas, and mining companies expanded into increasingly difficult areas, and as the practice of off-shore production in clothing and footwear drew attention to poor working conditions in global supply chains.

In 2004, the Sub-commission of the then UN Commission on Human Rights produced a set of "Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights". The Norms essentially sought to impose as binding obligations on companies directly under international human rights law the same range of duties that states have accepted for themselves: namely, "to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights," with the only distinctions being that states would have "primary" duties and companies would have "secondary" duties, and that the duties of companies would take effect within their (undefined) "spheres of influence".

Business was vehemently opposed to the Draft Norms, some human rights advocacy groups strongly in favor. The Commission on Human Rights declined to adopt the document, but requested the UN Secretary-General to appoint a Special Representative with the goal of moving beyond the stalemate and clarifying the roles and responsibilities of states, companies and other social actors in the business and human rights sphere.

In 2005, then UN Secretary-General Kofi Annan appointed Harvard Professor John Ruggie to the post; Secretary-General Ban Ki-Moon has continued the assignment. In 2006, the Commission was replaced by the UN Human Rights Council, to which the Special Representative reports annually. He also reports to the UN General Assembly.

The UN Framework

In June 2008, after three years of extensive research and consultations with governments, business and civil society on five continents, the Special Representative concluded that one reason cumulative progress in the business and human rights area had been difficult to achieve was the lack of an authoritative focal point around which actors' expectations could converge—a framework that clarified the relevant actors' responsibilities, and provided the foundation on which thinking and action could build over time.

The Special Representative presented such a framework to the Human Rights Council in June 2008. The "Protect, Respect and Remedy" Framework rests on three pillars: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, both judicial and non-judicial.

The Human Rights Council unanimously welcomed what is now referred to as the UN Framework, marking the first time that a UN intergovernmental body had taken a substantive policy position on this issue. The Council also extended the Special Representative's mandate until 2011 with the task of "operationalizing" and "promoting" the framework. The main sponsor of the resolution authorizing the Special Representative's

mandate is Norway, with Argentina, India, Nigeria and Russia as co-sponsors—one country from each UN regional group.

With the agreement of the Council, in June 2011 the Special Representative will submit a set of Guiding Principles for the implementation of the UN Framework, together with a report outlining options for how the Council might progress the business and human rights agenda after his mandate concludes.

The UN Framework has been well received by key stakeholder groups: a number of individual governments have utilized it in conducting their own policy assessments; several major global corporations are realigning their due diligence processes based on it; civil society actors have employed it in their analytical and advocacy work; and several major international organizations have drawn on it in adapting their own business and human rights policies and standards.

The State Duty to Protect

The first pillar of the UN Framework is the state duty to protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation and adjudication. It highlights that states have the primary role in preventing and addressing corporate-related human rights abuses. The Special Representative documented the duty's legal foundations, policy rationales and scope in his 2008 and 2009 reports to the Council.

Although states interact with business in numerous ways, many currently lack adequate policies and regulatory arrangements for effectively managing the complex business and human rights agenda. While some states are moving in the right direction, overall state practice exhibits substantial legal and policy incoherence and gaps, which often entail significant consequences for victims, companies and states themselves. The most common gap is the failure to enforce existing laws. Legal and policy incoherence arises because the departments and agencies which directly shape business practices – including corporate law and securities regulation, investment, export credit and insurance, and trade – typically work in isolation from, and uninformed by, their government's own human rights obligations and agencies.

In his reports to the Council, the Special Representative has proposed five priority areas through which states can work to promote corporate respect for human rights and prevent corporate-related abuse. They include: (a) striving to achieve greater policy coherence and effectiveness across departments working with business, including safeguarding the state's own ability to protect rights when entering into economic agreements; (b) promoting respect for human rights when states do business with business, whether as owners, investors, insurers, procurers or simply promoters; (c) fostering corporate cultures respectful of human rights at home and abroad; (d) devising innovative policies to guide companies operating in conflict-affected areas; and (e) examining the cross-cutting issue of extraterritoriality.

The Corporate Responsibility to Respect

The corporate responsibility to respect human rights means acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur. The term “responsibility” rather than “duty” is meant to indicate that respecting rights is not currently an obligation that international human rights law generally imposes directly on companies, although elements of it may be reflected in domestic laws. It is a global standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility, and now affirmed by the Human Rights Council itself.

A company's responsibility to respect applies across its business activities and through its relationships with third parties connected with those activities—such as business partners, entities in its value chain, and other non-State actors and State agents. In addition, companies need to consider the country and local contexts for

any particular challenges they may pose and how those might shape the human rights impacts of company activities and relationships.

Companies can affect virtually the entire spectrum of internationally recognized rights. Therefore, the corporate responsibility to respect applies to all such rights (although some rights typically will be more at risk than others in particular contexts). For an authoritative list of internationally recognized rights, companies should look to the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the core conventions of the International Labor Organization. The principles those instruments embody are the most universally agreed upon by the international community, and they comprise the human rights benchmarks by which other social actors judge companies.

Many companies say that they respect human rights. In order to “know and show” that they are meeting this responsibility, companies need a human rights due diligence process, whereby they become aware of, prevent, and address their adverse human rights impacts. Drawing on well-established due diligence practices and combining them with what is unique to human rights, the UN framework describes the core elements of human rights due diligence: based on a statement of commitment to respecting rights and supporting policies, human rights due diligence should include assessing human rights impacts, integrating respect for human rights across relevant internal functions and processes, and tracking as well as communicating performance. (The Special Representative is currently running a public online forum to seek views on various aspects of the corporate responsibility to respect: <http://www.srsconsultation.org>.)

Access to Effective Remedy

Even where institutions operate optimally, adverse human rights impacts may still result from a company’s activities and victims must be able to seek redress. Effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect.

As part of their duty to protect against business-related human rights abuse, states must take appropriate steps within their territory and/or jurisdiction to ensure that when such abuses occur, those affected have access to effective remedy through judicial, administrative, legislative or other appropriate means. Currently, access to judicial mechanisms for business-related human rights claims is often most difficult where the need is greatest as a result of both legal and practical obstacles. And there is currently an uneven patchwork of non-judicial mechanisms, including mechanisms at the company level, national level (such as national human rights institutions, or National Contact Points in states that have signed the OECD Guidelines on Multinational Enterprises) and at the international level (such as the Compliance Advisor Ombudsman for the International Finance Corporation).

Non-judicial mechanisms, whether state-based or independent, should conform to principles of legitimacy, accessibility, predictability, rights-compatibility, equitability and transparency. Company-level mechanisms should also operate through dialogue and engagement rather than the company itself acting as adjudicator of its own actions. To support improved access to information, learning and expertise in pursuit of more effective non-judicial grievance mechanisms, the Special Representative established an online resource to assist parties in navigating their available options—Business and Society Exploring Solutions, <http://www.baseswiki.org>.

For more information, including the complete archive of the Special Representative’s reports, speeches, articles, research, correspondence, and other submissions to the mandate, visit <http://www.business-humanrights.org/SpecialRepPortal/Home>.