



How Business Can Encourage Governments to Fulfil their Human Rights Obligations

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The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. In June 2006, the Global Compact Board established a Human Rights Working Group. Chaired by Mary Robinson, former UN High Commissioner for Human Rights and President of Ireland, the goal of the working group is to provide strategic input to the Global Compact's human rights work. The following is one of an ongoing series of notes on good business practices on human rights endorsed by the working group. Rather than highlighting specific practices of individual companies, Good Practice Notes seek to identify general approaches that have been recognized by a number of companies and stakeholders as being good for business and good for human rights.

1. BACKGROUND

Businesses are increasingly being called upon to raise human rights concerns with the governments of countries in which they operate, most often by local or international civil society organisations. Even in the absence of calls from civil society, in some instances businesses may wonder whether and, if so, how they might address such human rights concerns, as an increasing number of companies accept the business case for integrating human rights into their core operations and their engagement with stakeholders, including with governments.¹ Recognising that many businesses face this challenge and that there is a lack of available guidance, this Good Practice Note on *How Business Can Encourage Governments to Fulfil their Human Rights* aims to bring greater clarity to this sensitive topic. The Note does not present explicit guiding principles for companies to follow, but aims to provide an initial orientation to an underexplored, but increasingly pressing topic in responsible business practice.

¹ For example, see 'Human Rights – Is it Any of Your Business' (IBLF, 2000) and the 'Embedding Human Rights in Business Practice' series published by the UNGC and the UN OHCHR (http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html).

The Note draws on interviews conducted by the authors from mid-2009 to early 2010, and was developed in consultation with a broad range of business executives and human rights practitioners. The Note considers actions and lessons learned by companies that have and have not attempted to encourage governments to fulfil their human rights obligations. It provides a brief introduction to the context in which businesses may need or want to encourage governments to fulfil their human rights obligations; identifies key questions for consideration in a company's decision-making process; and presents potential courses of action for engaging with governments regarding human rights concerns. The Note concludes by highlighting important issues for consideration by companies that elect to engage.

When faced with a human rights situation, companies may initially consider inaction or divestment/disinvestment the only courses of action, however the Note highlights that there is a wide spectrum of opportunities through which business can engage with government on human rights issues. Engagement strategies may range from public lobbying to generate political will, through to supporting governance capabilities to address a human rights concern. Further, an effective strategy may combine a number of activities and employ a number of approaches. If and how a company decides to get involved will ultimately depend on (i) what it determines to be a legitimate role for business in the context in question, based on business and ethical considerations, and (ii) analysis of the opportunities and risks of both action and inaction.

2. CONTEXT

As primary duty-bearers, governments are obligated to protect and respect human rights. Businesses have a responsibility to respect human rights by acting with due diligence to avoid being complicit or directly infringing on human rights.

- These respective responsibilities have been widely accepted by governments, civil society and the business community. They are reinforced in the three-part framework –‘Protect, Respect, Remedy’- of the Special Representative of the Secretary-General on Business and Human Rights, which was welcomed by the United Nations Human Rights Council.²
- Respect and support for human rights are also required by Global Compact Principle 1, across the full spectrum of human rights.³
- Further, emerging legal precedents⁴ regarding complicity, and voluntary initiatives that support engagement with governments on human rights protection and promotion,⁵ continue to raise the legal and normative expectations of business engagement.

² For a portal with all the key reports and documents related to the work of Professor John Ruggie, the UN Special Representative on Business and Human Rights, visit www.business-humanrights.org/SpecialRepPortal/Home

³ See *Human Rights Translated: A Business Reference Guide* to better understand the relevance of all human rights for business (http://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf). To deepen your understanding of the first two Global Compact principles you can use the *OHCHR/UN Global Compact e-learning tool* (<http://www.unssc.org/web/hrb/Default2.asp>.)

⁴ As detailed in ‘Red Flags’, an online database of corporate human rights litigation compiled and managed by International Alert and Fafo (<http://www.redflags.info/>).

⁵ For example, the Extractive Industries Transparency Initiative (<http://eittransparency.org/>) regarding resource governance, the Voluntary Principles on Security and Human Rights

- These responsibilities apply across the range of organisational types and sizes (state-owned enterprises, private companies etc). Although the majority of initiatives and emerging international legal precedents have primarily been raised in response to the operations of large TNCs in host countries, companies may also engage with their own governments on human rights concerns. Companies from a broad cross-section of industries, including the manufacturing, extractive, telecommunications and tourism sectors, have been called to engage with governments on human rights.
- Due diligence applies across all business functions and impacts. Engagement with governments on their obligations does not mitigate a company's human rights responsibilities within its core business operations.

When governments fail to uphold their responsibility to respect human rights, corporations are increasingly expected to do more to help support human rights including by encouraging governmental integrity.

These expectations are particularly high in areas of weak governance and conflict affected areas.⁶

The rationale behind such calls varies but is often based on either:

- a. Perceived influence or capacity to act. The degree of influence corporations have with governments is seen by some societal actors as placing a moral obligation on corporations to use their political or economic clout to advocate for human rights. The more severe the human rights abuse and the greater the influence the company is perceived to have, the louder such calls to action are likely to be. Further, many human rights activists and scholars point to the first principle of the UN Global Compact and the preamble of the UDHR, respectively, to note that corporations, as “organs of society,” have a responsibility to “*support . . . the protection of*” and “*promote respect*” for human rights.

Executives report experiencing disconnects between the perceived influence or capacity of a business to act by NGOs and the legal restrictions, or lack of traction with government actors that executives operate under. Executives have described this position as one of balancing tensions between their License to Operate (or ‘Social Charter’), and their Corporate Charter, that is granted by particular governments under specific terms.

- b. A belief that the business is somehow complicit (either legally or, more often, morally)⁷ in a specific human rights abuse. The strength and content of the calls

(<http://www.voluntaryprinciples.org/>) concerning security and the use of government security personnel, and the Global Network Initiative (<http://www.globalnetworkinitiative.org/>) to promote freedom of expression and privacy in information and communication technologies.

⁶ See ‘Guidance on Responsible Business and Investment in Conflict-Affected and High Risk Areas’ (2010) by the UNGC and Principles for Responsible Investment.

⁷ A/HRC/8/5 para. 77: The SRSG work has noted that “Mere presence in a country, paying taxes, or silence in the face of abuses is unlikely to amount to the practical assistance required for legal liability.” Although the SRSG went on to note that “acts of omission in narrow contexts have led to legal liability of individuals when the omission is legitimized or encouraged the abuse.” A full discussion on complicity is beyond the scope of this Good Practice Note. Rather this Note

to action may reflect the perceived contribution of the business to the abuse at issue and/or the perceived benefit to the company from the abuse.

Calls for human rights involvement may come from a variety of stakeholders, including:

- Civil Society
 - When organizations that represent the interests of civil society find their own ability to influence a government limited, they may seek to leverage a company's governmental connections and interactions to overcome these limitations and promote greater governmental accountability. Requests to companies to engage with governments might be made privately or publicly, and often call for public statements regarding human rights concerns.
- Investors
 - As risk-assessment tools develop and expectations heighten, investors increasingly consider the positive and negative environmental, social and governance (ESG) impacts of companies, including human rights related impacts. These developments, and public calls for corporate engagement on human rights issues, may prompt investors to ask companies to engage with host authorities with respect to human rights concerns.
- Company Employees
 - Companies' own employees may become concerned with the human rights situation in a host country and may request that the company use its influence to support the protection of human rights as contemplated by the Global Compact's first principle. Employees and their families may even be directly affected by human rights concerns, in which case an internal call to action may be particularly demanding.
- Home Governments
 - Home country governments may request a company's active support of a diplomatic position, e.g. to engage with government actors on a human rights concern and/or to reconsider their investment in a host country as an alternative to formal sanctions on investment.

3. MANAGING THE DECISION MAKING PROCESS

Executives who had been involved in deciding whether or not to engage with governments on human rights issues reported the following elements of managing the decision making process.

Who is involved in deciding whether to engage, and if so how?

- Companies generally do not have a formal protocol in place for addressing requests for human rights engagement. Some companies have a policy against any kind of political activity. Other companies reported having begun with a risk assessment.

focuses on how companies can go beyond avoiding complicity to encourage governments to protect and respect human rights.

- Various departments of the company may be consulted and involved: CSR, government relations, legal, communications, human resources, procurement, employees on the ground, country managers.
- Companies often note conflicts of interest between departments due to their different objectives (i.e. ranging from legal counsel, to the CSR team to government relations, human resources, procurement, or communications).
- CEO involvement varies from company to company, often reflecting the seriousness of the human rights concern, the degree of actual or perceived connection to the business and the scope of the requested company action.
- Some companies seek advice from external parties, such as consultants, civil society groups, other companies, their home government, and local embassies and industry associations, when determining how to respond.

Deciding whether or not to get involved benefits from rigorous (even if sometimes necessarily rapid) analysis of the situation in economic, ethical and legal terms.⁸ Such analysis may also help to determine *how* a company might get involved, if it so chooses.

Key questions for consideration include:

How strong is the company's connection to the injury or harm?

- Does the company perceive that it in any way contributes to the harm, or benefit from the situation?
- What do other stakeholders perceive to be the company's connection to the human rights situation?

Is the human rights situation fully understood?

- How serious is the human rights abuse? What is the nature/scope of the abuse?
- How clear-cut is the human rights situation? How does each party involved see the situation? (How is it 'framed'? What are the 'facts'?)
- Is the government's failure to uphold its human rights responsibilities the result of a lack of will and/or lack of capacity?

⁸ Many of these questions are drawn from *Beyond sentimentality or ideology and Possible Criteria for 'Involvement'* (Leadership and Corporate Accountability Program, Harvard Business School, 2008), a slide presentation at a Global Compact US Network event on business and human rights held at Harvard University in April 2008.

How would involvement impact business?

- What possible competitive and/or legal responses may result from involvement or inaction? What opportunities (e.g. risk management, more secure operating environment, improved government and stakeholder relations, reputation) and risks (e.g. repercussions for employees, expectations for future engagement, license to operate revoked) are present in the situation?
- Will there likely be resistance or support, both within and outside the firm for the chosen course of action?
- How would involvement impact the company's reputation, either positively or negatively?
- How would involvement impact stakeholder relationships, including the company's relationship with the host and home governments, local and international civil society, shareholders and/or investors, and other business relationships? How might the company manage different impacts on different stakeholder relationships (i.e. if some may be positive and others negative)?

What is the connection between the concern and the company's values and purpose?

- Is the societal concern a legitimate societal expectation/demand of the company?
- Would involvement be consistent with the firm's (1) mission, (2) guiding values, (3) objectives in addressing the specific situation, and (4) the economic, legal, and ethical imperatives?
- Would involvement be a legitimate exercise of the firm's authority? Would the forms of involvement considered infringe on the legitimate authority of others?

What impact could the company have?

- What avenues for engagement on human rights concerns are open to the company? What relationships in the local and international context could the company draw on to generate a strategy appropriate for the situation?
- Would involvement be productive? Is there an engagement strategy that is more likely to elicit a positive government response?
- Is the company able to secure the necessary inputs, resources, approvals and consents to execute an engagement strategy?
- How would the company define and measure 'success'? Over what time-frame?

Is the company's 'own house in order'?

- Are there human rights issues within the company's own business operations that require attention? How will these be addressed in order to maintain business integrity when engaging with governments?

4. OPTIONS FOR ACTION

Opportunities for engagement may be present during various points of a project cycle. Engagement may be proactive or reactive.⁹ Based on the above analysis, a wide spectrum of human rights engagement opportunities exists. Companies may choose to; (a) directly engage the government with their concerns; (b) seek to address the human rights concerns indirectly by engaging with third parties; (c) engage in efforts that support governance capacity; (d) refrain from involvement.

A) Direct Approaches:

Companies may choose to raise human rights concerns with host governments to try to persuade them to uphold their human rights obligations. Some companies are hesitant to address a government's lack of political will to act on an issue because they believe that doing so would involve interfering in the political affairs of a country. Some other companies find this argument untenable, stressing that in many countries and situations they are already political actors because of their economic and social impacts. Companies that have directly engaged with governments cite multiple risks to reputation and operations from inaction, the growing legal risks associated with complicity, and a broader moral imperative to engage on human rights issues as prompting their action. Executives described choosing to engage publicly or privately, individually or collectively.

Public vs. Private:

- Companies may opt to raise concerns both publicly and privately. For instance, a company may publicly state their overarching position on human rights, but engage directly with government actors on their obligations in private.
- For private conversations to occur effectively, the company must usually have a pre-existing government contact with whom it has a rapport. These conversations may focus on information gathering, or on the design and delivery of a desired course of action. Their effectiveness will be partly determined by the seniority, function and receptiveness of the government counterpart. Such meetings or opportunities to raise concerns are not always possible to arrange (regardless of what civil society might believe), including because the government may not be open to hearing the concerns.
- Transparency is a challenge. Depending on the host government's position on public debate and the situation at hand, public statements may be more likely to

⁹ For example, in the apparel industry companies have engaged with governments on labour rights concerns prior to investing, and have also engaged when legislation is proposed that would weaken labour rights and make it difficult for companies to meet their responsibilities to their employees and other stakeholders. Certain business-government relations may lend themselves more readily to engaging on human rights issues (i.e. when considering operations in Special Economic Zones, or when operations with a large social, environmental or economic footprint are planned, especially when conducted with substantial government involvement). However, creative engagement strategies have also been adopted by both small and medium sized enterprises, and companies with a relatively small footprint.

satisfy civil society whilst private corporate efforts may be more effective in achieving the desired government response. Further, public statements may put the company in an awkward position with the government concerned. When civil society is unaware of private corporate efforts to encourage governments to uphold human rights they may assume that no action is being taken; equally, without supporting evidence, they may distrust company assertions that they are engaging privately.

Individual vs. Collective Action:

- Collective action with other companies or stakeholders in a country or region (whether undertaken publicly or privately) is generally considered preferable from the corporate standpoint, reducing risks for individual actors and increasing leverage.
- Collective action through industry associations may be a good option for human rights issues that are somewhat distant from business activities. However, industry positions are often a compromise. Therefore, companies may also consider independent action.

B) Alternative Approaches:

Companies may feel more comfortable and/or feel it is more effective to address human rights concerns indirectly by raising them with a third party.

- Companies sometimes choose to bring the human rights concern to the attention of their home government on the assumption that such issues are best addressed between governments. For instance, companies may liaise with their national embassies and diplomatic envoys in the host country in this regard.
 - Many companies feel that the expectations placed on them to engage should not surpass those placed on their own governments. Other companies believe that they may have unique influence in a particular country over and above that of their home government.
- Companies sometimes look to intergovernmental bodies, such as the Security Council or regional bodies (i.e. ASEAN, the African Union), for guidance on engagement with host governments on their human rights obligations. If such bodies have not acted or spoken out, companies may feel reluctant to take a stand themselves. In certain circumstances, companies may look to international governing bodies for advice (e.g. approaching the OECD in relation to meeting the Guidelines for Multinational Enterprises).
- Participating in international initiatives which provide a framework to support governments and businesses to meet their human rights obligations (e.g. the Extractive Industries Transparency Initiative) provide another approach. Global Compact local networks and the OHCHR may provide alternative forums for furthering a shared understanding of the benefits of stronger governance systems for business and human rights.

C) Bolstering Governance Capacity:

Companies may also attempt to enhance a government's capacity to meet its human rights obligations, in addition to, or instead of engaging on shortfalls in political will. They may do so both through direct support of capacity-building in the government and in supporting civil society participation in governance mechanisms. Many companies have found that bolstering governance capabilities can be a particularly powerful and

appropriate way to facilitate governmental integrity, and a strategy with which they felt more comfortable.

- Companies have provided a broad range of types of support for governance-capacity building. This support has included human rights training programs (e.g. funding training of the judiciary or government security forces), initiatives to foster transparency and accountability in governance systems (e.g. EITI), and supporting government in meeting the social and economic needs of the population (e.g. health and education programmes, economic development initiatives etc).
- Multi-stakeholder involvement in the design and delivery of efforts to bolster governance capacity were found to be important in order to protect business from accusations of collusion with government actors. Companies also found involvement in multi-stakeholder initiatives, such as local Global Compact Networks, or in partnerships with international organisations and NGOs beneficial given the expertise of partner organisations.
- Some companies feel that sensible and transparent engagement with civil society actors, including human rights organizations, models appropriate governance mechanisms in fraught contexts and therefore makes a contribute.
- A company may also seek to engage with national human rights institutions (ie. a government's Human Rights Commission).

D) Refrain from Involvement:

Careful consideration may lead companies to avoid involvement.

- In some instances where calls to engage with governments on human rights issues are made, there may be a lack of necessary information such that a business concludes that intervening might cause more harm than good.
- Alternately, a business may decide that intervening in an issue that is causing only minor concern would entail infringing on a country's sovereignty or culture.
- Some companies may have policies of non-interference in political affairs that prevent them from involving themselves in most or all human rights situations.
- Companies may conclude that they do not have the appropriate influence, resources or skills to engage with governments on human rights issues.
- In all instances, businesses should recognise that both action and inaction on human rights may have potential consequences for both the organisation and the situation.

5. KEY ISSUES AND CONSIDERATIONS

In interviews with executives from across sectors and industries, recurring themes were raised. These can be grouped into key issues and considerations related to organisation management, external relations, and government relations.

Organisation Management

- ❖ Recognizing the Business Case for Involvement – While companies are unlikely to engage if doing so would put their business operations or staff at risk, company experiences suggest that, in some circumstances, well-considered engagement can benefit business and eventually result in a more secure operating environment, decreasing risks overall. They also note there may be

consequences for inaction in response to calls for engagement, including, increased risks to the company's reputation.

- ❖ Understanding the root cause of the human rights situation – The type of involvement a company may choose to engage in will depend heavily on whether the government's failure to uphold its human rights responsibilities is the result of failures in political will and/or a lack of capacity. A detailed analysis of the political and historical context of the human rights abuse was found to be particularly useful in this regard.
- ❖ Coherence between relevant internal departments – Various departments within the company represent different interests. Internal communication ensures that different internal stakeholders understand each other's position and concerns so that all considerations are taken into account before a final decision on whether, and if so how, to get involved is reached. Setting up an 'ethical committee' or 'risk committee' drawing on expertise from a range of departments may help accomplish this goal.
- ❖ Identifying outcomes - Attempts to encourage governments to fulfil their human rights obligations can be assessed on at least two levels of impact. At the level of the organisation, impacts on reputation may be a focus (getting a company's "name out of newspapers" and/or improved reputation) along with ethical/moral considerations reflected in the organisation's culture, staff morale and retention. In relation to the operating context, ultimate outcomes may include stronger, more transparent governance systems and an improved, lower-risk operating environment. As knowledge and expectations of responsible business activity develop these two levels of impact are increasingly linked. A key lesson learned from companies who have chosen to engage is that business engagement with government on human rights issues is most effective if sustained over a, possibly long, period of time.

External Relations

- ❖ Transparency – A number of companies have found that being transparent about their response has improved their relationships with civil society and other stakeholders. For instance, companies note that, although civil society frequently overestimates the degree of leverage business has with local governments, being as transparent as possible about what the company is doing may help civil society better understand the company's intentions and the challenges they face. Companies may not be able to share their exact approach with stakeholders for legal and strategic reasons, but they can, at a minimum, share the company's goals and concern for the human rights issue.
- ❖ Stakeholder Engagement – Some companies consider civil society organizations to offer expertise on the situation and regularly invite representatives to meetings to better understand their position. Some companies also note that establishing relationships with civil society organizations from the beginning can reduce reputation risks. With prior consultation, civil society organizations were considered more likely to approach the company privately before raising concerns publicly.

Government Relations

- ❖ Home Government – A company's home government may be able to provide valuable advice and support to companies being called on to encourage host governments to uphold their human rights obligations. Home government communication may be important to ensure a consistent message, and in developing appropriate methods of delivering a message to a host government. If it is not possible to reach government officials within the country or in any event, companies may consider, and feel more comfortable, contacting the host country embassy within their home country or having their corporate headquarters do so.
- ❖ Host Government – Companies described their sensitivity to the historical and political context of the country when considering if, and how, to engage with governments. In this regard, the character of the government, particularly of top-officials, determined their form of engagement. Companies also described approaching different levels of government (local, municipal, central) on different topics, and found some departments and individuals more approachable than others. Individual relationships between company representatives and government officials are key to most government engagement strategies; any business will have multiple connections and relationships with government on which to draw, opening up the potential for innovative engagement strategies, especially for smaller or less influential businesses. Companies also described using established mechanisms of business-government communication (i.e. business associations, government-sponsored roundtables etc) to raise concerns.
- ❖ Tone – When raising human rights concerns with governments, some companies have found that using human rights language is not always effective and that there may be other ways to convey the message that are both more effective and more comfortable for the company concerned.
- ❖ Conveying the Business Case to Government – Companies may regularly meet with government officials, but the nature of their meetings are generally business oriented. Companies have noted that it is sometimes more effective and that they sometimes feel more comfortable presenting their concern for the human rights situation in the context of it being problematic for the business and not just problematic for the government. In this regard, convening or participating in multi-stakeholder events that convey the business case for human rights protection, and the shared interests of government and business in such protection, was considered particularly effective.

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