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THE CHINA RESPONSIBLE BUSINESS FORUM

Corporate Responsibility in the Era of the UN Guiding Principles

Building social license through
addressing impacts on human rights



WORKSHOP BRIEFING

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About the Forum

The China Responsible Business Forum (CRBF) aims to build business knowledge, capacity and leadership in relation to the UN Guiding Principles on Business and Human Rights in the Chinese context.

2014 saw the pilot year of the CRBF which engaged Chinese and multinational companies in three workshops in Stockholm, Beijing and Shanghai. This briefing note provides an overview of the pilot year, themes and lessons from the Beijing workshop, and some conclusions regarding next steps for the project.

CRBF is structured as a cooperation project between The Global Business Initiative on Human Rights (GBI), The Global Compact Network China (GCNC), The Institute for Human Rights and Business (IHRB), Peking University (International Law Institute and Guanghua School of Management), and Tracktwo.

The CRBF pilot year received support from the Swedish Ministry for Foreign Affairs and the Swiss Federal Ministry of Foreign Affairs, which the CRBF gratefully acknowledges.

Context

Throughout the 1990s and early 2000s, businesses around the world faced campaigns from non-governmental organizations (NGOs) that highlighted working conditions in sweatshops and examined allegations of labour abuses in the companies' own operations and throughout complex global supply chains. Many multinational companies developed codes of conduct for their suppliers aimed at combatting such abuses. China is a key part of this global supply chain.

Further, China's role in the international economic and political spheres has been fundamentally transformed. Today, China is no longer merely the factory to the world; it is a major global economic player in its own right, with large, competitive, private, publicly listed and state-owned companies operating in all industries and in all corners of the globe.

There have been many developments in the wider corporate social responsibility (CSR) sphere in China, encompassing the environment, corruption, labour rights, other aspects of human rights, and related issues such as philanthropy. Actors, both public and private, have proactively taken steps to encourage business to fulfil their corporate responsibilities.

Its clearest manifestation is in the sharp increase in CSR and sustainability reporting: in 2006 only 19 such reports were published, but by 2012, over 2,000 Chinese companies were publishing CSR or sustainability reports. Many of these reports include issues related to human rights standards and responsibilities. Another example from 2012, the State Council announced plans to require major industrial projects within China to pass a social risk assessment, aimed at preventing social incidents and grievances that might have operational consequences.

State-owned enterprises (SOEs) are not immune from CSR pressures either. In response to evolving expectations, CSR reporting became mandatory in 2013 for SOEs under the State-owned Assets Supervision and Administration Commission (SASAC). In 2008 SASAC released the 'Guide Opinion on the Social Responsibility Implementation for the State-Owned Enterprises Controlled by the Central Government', which provides guidance on CSR implementation to state-owned enterprises.

Stock exchanges are leading further reporting requirements. For example, all companies listed on the Shenzhen Stock Exchange must publish a CSR report. Similarly, the Shanghai Stock Exchange in 2008 encouraged companies that are listed on Shanghai Stock Exchange Corporate Governance Index, companies that list overseas, and companies in the financial sector, to publish an annual CSR report.

There are also a number of international and Chinese organisations working with business to try to address societal concerns. One of these organisations has been the UN Global Compact, which at the time of writing had 246 Chinese business signatories. The Global Compact Local Network China, which sits within the China Enterprise Confederation, annually highlights best practice case studies relating to the 10 Global Compact principles on human rights, labour rights, environment, and anti-corruption. Six Chinese companies are also members of Global Compact LEAD, a platform for sustainability leaders.

Industry bodies have also released standards and guidelines: for example the Social Responsibility Guide of China Industrial Companies and Industrial Associations, and the development of the China Social Compliance CSC9000T standard by the China National Textile and Apparel Council.

Context

These developments and initiatives in the Chinese context are notable, along with governmental efforts to provide guidance for Chinese companies operating overseas. Operations abroad have been facilitated by the country's accession to the World Trade Organization in 2001 and the "Go Out" policy, which encouraged Chinese companies to operate abroad. By the end of 2011, 18,000 Chinese-invested companies operated in 177 countries. The challenges facing these companies include the human rights impacts of their investments and operations, especially under conditions of weak governance. Societal reactions in host countries and external pressures are contributing to a greater awareness of the need to address and mitigate these challenges.

An example of this is the Ministry of Commerce released Guidelines for Environmental Protection in Foreign Investment and Cooperation in February 2013. As Article 1 explains, these are intended "to direct enterprises in China to further regularize their environmental protection behaviours in foreign investment and cooperation activities, timely identify and prevent environmental risks, guide enterprises to actively perform their social responsibilities of environmental protection, set up good international images for Chinese enterprises, and support the sustainable development of the host country". Several similar initiatives are ongoing in the forestry sector (2009 Guide on Sustainable Overseas Forests Management and Utilization by Chinese Enterprises), financial sector (2012 Green Credit Guidelines), and more recently the mining sector (2014 guidelines by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCMC).



The UN Guiding Principles and Engaging Business in the Chinese Context

The adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs) was one of the most significant global developments related to CSR and sustainability efforts in recent years. The Chinese government endorsed the UNGPs with other countries at the Human Rights Council in 2011. The level of understanding and knowledge about the UNGPs is however generally low in China; no Chinese platform exists to discuss business and human rights issues, and there has been little insight and information available about what steps Chinese companies are taking to engage in this agenda. The partners have been working on the UNGPs in China since 2012 to respond to this capacity gap.

As evident from the successful event series “Sustainable Business and Investment in the Global Context: Rights, Risks and Responsibilities” organised in Beijing in April 2013, Chinese companies are increasingly looking for learning opportunities and peer-to-peer exchanges in this area. The event series was the first of its kind in China, and brought together 200 participants for a practical business-to-business discussion on sustainable business and human rights.¹

Building on this event series and a project implemented in 2013-2014 entitled “The Corporate Responsibility to Respect Case Study Project: Connecting the UN Guiding Principles and Chinese Corporate Practices”,² partners started developing the idea of a regular and sustained programme for learning and dialogue with Chinese actors on business and human rights: the China Responsible Business Forum (CRBF).

CRBF was piloted throughout 2014 in a series of workshops held in Stockholm, Beijing and Shanghai from May to October. This briefing summarizes the themes and key messages at these workshops, with a focus on the workshop in Beijing.

1. Event series report available here: <http://www.global-business-initiative.org/wp-content/uploads/2012/05/Report-of-Business-Executives-Conference-and-Roundtable-for-Practitioners-16-17-April-2013-Beijing-English.pdf>

2. Project report available here: <http://www.global-business-initiative.org/wp-content/uploads/2014/10/EN-China-Learning-Project-Report.pdf>

Workshop Overview

The one-day workshop was designed to support sharing of good practices, tools and lessons learned regarding a key aspect of corporate responsibility in the era of the UN Guiding Principles, namely building social license through addressing impacts on human rights. Chinese state-owned and private enterprises attended the workshop, as well as multinational companies operating in China but headquartered outside the country.

Representatives of Global Compact Network China, Peking University International Law Institute, Guanghua School of Management, Global Business Initiative on Human Rights, Institute for Human Rights and Business and Tracktwo gave opening remarks and presentations. Speakers also included representatives from China Minmetals Corporation, CITIC Construction, CPI Yunnan, General Electric Company (GE), Hitachi, H&M, Huawei, Motorola Mobility, Nestlé and Sinosteel Corporation, who shared experiences from diverse industry sectors and geographies. A full list of participants (companies represented) is provided at the end of the briefing.

The workshop comprised a welcome and orientation session, a morning session on social license and the evolution of business and human rights principles, and an afternoon session focused on approaches to assessing and managing diverse human rights impacts related to workplace, supply chain, community and customers.



Themes and Key Messages

The following themes and key messages emerged from the pilot year of CRBF:

What is social license and how does it relate to the UNGPs?

John Morrison gave opening remarks on the concept of “social licence”. The social licence is the approval granted to a company’s operations by the local community and other stakeholders. It is a perception of legitimacy based on trust and consent – does the company go about its business in a proper way? Social license is not business-centric but society-centric - you do not manage legitimacy, consent and trust directly. The UNGPs offer a good framework for managing these underpinning relationships in society – social license is the reward for good management of human rights impacts. Social license is an increasingly important concept also for Chinese companies, particularly in overseas operations in Southeast Asia and Africa where CSR issues have affected their reputation and investments.

The cost of conflict and importance of social license

While it is true that businesses need a legal license and a permit from the government to operate, and it used to be the case that that was considered sufficient, there is now a growing realisation that businesses also need acceptance from communities and societies for particular operations. Different examples of this were raised, including an oil company, who which lost its social license to operate in an African country, and in relation to the case of a Chinese company and a project in Southeast Asia. Another example is the cost of conflict in mining, where it has been estimated that mining companies can lose \$20m a week if operations are blocked by local communities . The social license concept gained widespread understanding in mining but it is now applicable in many other industries and geographies.

The issue of “local content”

Several speakers also addressed the issue of localisation and local content. – in other words the extent to which a foreign company is able to utilise local skills in its operations. This is one of the biggest CSR and social license issues for companies (Chinese or otherwise) in Africa, and Chinese companies have often been criticised for bringing Chinese labour to Africa to work on the projects, rather than creating local jobs. One speaker talked about how their company had increased the number of local workers in their operations in one African country from 10% to 90% through long-term investments in training, capacity development and infrastructure. The issue of local content is complex however and tensions remain in many places around what local means and what companies should do when the needed skills do not exist. Participants recognized that local content is very much interrelated to the issue of social license as well as human rights such as non-discrimination and livelihoods.

Themes and Key Messages

Business relationships are a driver of corporate human rights awareness and performance

Workshop participants commented on how business relationships are contributing to human rights awareness and performance. Companies' evolving expectations of their business partners' human rights performance is leading to business-to-business engagement on human rights. Participants discussed how such human rights engagements have been designed and their experiences of them. Companies are building human rights awareness and performance within business relationships through a number of ways including bilateral dialogues, communicating policies and standards to business partners, and via governments. Successful engagements have been based on: dialogues as partners and collaborators; consistency of key messages and expectations; developing practical ways forward, including through action plans.

Participants also discussed how partnerships with civil society organisations can support understanding and addressing human rights impacts in a business relationship context. Some participants expressed interest in ongoing learning opportunities on respect for human rights in business relationships, particularly around mergers and acquisitions and supply chain.

What is the difference between a human rights-based approach and traditional CSR?

The concept of corporate social responsibility (CSR) has been criticized for different reasons, including the fact that CSR lacks a clear definition. There is no internationally recognized definition of CSR. What exactly should be the responsibility of business, and what should be the responsibility of the state? The concept of CSR and stakeholder expectations on business is evolving, and many companies now prefer to use other terms and concepts like "sustainable business" and "shared value". Traditional CSR is often associated with charitable activities outside of core business processes and one-way communication through sustainability reports. This is shifting to more rigorous and transparent efforts to address the impacts related to core business strategies, investments, processes, operations and value chain relationships, and two-way communication through stakeholder engagement and partnerships with NGOs.

Business and Human Rights (BHR) is a rights-based approach that focuses on risks to rights-holders through business impacts. Rather than looking at human rights, environment and development issues differently in silos, a rights-based approach brings a human rights lens to different issues that affect communities, labour, and business alike, such as water, health and safety, intellectual property (IP), local content and stakeholder engagement. A rights-based approach focuses on the most vulnerable individuals or groups likely to be affected, within the organisation or outside the organisation in the supply chain or community, and tailors responses and strategies to mitigate harm.

Describing his company's approach to local employment in Africa, one workshop speaker referred to the often-quoted old development saying "Give a man a fish and you feed him for a day. Teach him how to fish and you feed him for a lifetime". But, as pointed out in more recent literature on international development aid, this man or woman must have rights to fish in the first place. The international human rights standards were formulated to safeguard people's rights and recognizing basic human needs, but needs and rights are not the same thing. Needs may be met by charity. In contrast, human rights are claims on duty-bearers, and are legally-tenable entitlements with a foundation in international law. The duty-bearer has a corresponding obligation to honour those rights, by respecting, protecting, and fulfilling them, which can be claimed and have to be met by a corresponding duty-holder.

Themes and Key Messages

Another question discussed in relation to rights-based approaches concerned pharmaceuticals and traditional medicine, and how companies address intellectual property issues and the rights of minority groups who rely on inherited prescriptions to make a living. When big companies take over the intellectual rights to these traditional medicine prescriptions, how do they compensate these minority groups and respect their human rights?

The role of governments and the role of business

What is the role and responsibility of business – in finance, in extractives or in technology – when you have the challenge of governments abdicating their role? The UNGPs do not call upon businesses to take the role of governments – in fact, such a development can be detrimental to human rights. As established in the UNGPs, the State has a duty to protect human rights against abuses by third parties, including businesses, by means of policies, regulation, incentives, enforcement of laws, and adjudication. Companies have a responsibility to respect human rights, meaning which means they should act with due diligence to avoid infringing the rights of others and address adverse human rights impacts with which they are involved. Human rights protection ultimately depends on the state, but the private sector also needs to enhance and build its capacity to respect human rights, and not exploit weak governance structures.

Business and human rights in China: drivers and capacity-building needs

The opening remarks and presentations by representatives from the Global Compact Network China and Peking University emphasised that now is an important and dynamic era for Business and Human Rights in China. At the same time, the period has seen some acute conflicts between business and human rights. The emergence of environmental degradation, strikes and large-scale protests against land grabs are prompting the government and business to become more responsive to public concerns. Policy documents like the National Human Rights Action Plan 2012-2015 encourage promotion of human rights knowledge in enterprises and public institutions, and “corporate cultures that honor and protect human rights”. A common issue with regard to corporate responsibility to respect in China as well as the rest of the world is how to act in situations where there is a conflict between international human rights standards and local laws. Another common theme at the workshop was practices and experiences developed by Chinese SOEs abroad, and to what extent these feed back into policies and approaches in China.

One new insight and key takeaway for many of the company representatives who participated in the activities organised by the CRBF partners in China in 2013-2014 was that the UNGPs provide a clear and authoritative framework for companies to address human rights, a concept that has frequently been perceived as vague and highly politicized with little direct relevance and applicability for business. There is a clear interest in peer-learning and practice-sharing among Chinese companies, and a need for cross-sector, cross-discipline, cross-border learning around B&HR. The objective of the CRBF project is to create a platform for practical learning and dialogue among business leaders and other stakeholders on salient human rights challenges in China and globally.

Themes and Key Messages

Approaches to assessing and managing human rights impacts

The afternoon session focused on case studies, tools and frameworks used by companies in diverse sectors to address impacts. Different ways to integrate impacts were discussed – in enterprise risk management, new business relationships, sales and marketing. Some companies do human rights impact assessments focused on a country, project, commodity or issue, such as impacts on land or migrant workers. In any case, human rights impact assessments should not be a one-off activity but an ongoing process informed by key stakeholders, peers, third parties and NGOs. The importance of having a global policy and approach to human rights was also raised, rather than applying different standards in different country contexts. One multinational carried out its first comprehensive human rights impact assessment (HRIA) in 2010 and has now covered more than ten country operations in various regions of the world - its next round of HRIAs will include China.

Another question discussed during this session was how much human rights due diligence (HRDD) a company should do and how to prioritise? These HRIAs are time-, resource-, and labour-intensive, and there are costs associated to this work. So what is the right amount of resources to spend, and does the company decide priorities by itself, within the industry, or with others? And when should a company walk away from a project because the risks are too high or not up to standards? One speaker described HRDD as a good opportunity for the company to draw attention to human rights principles and policies, to understand potential risks and to help it earn trust and legitimacy from the different stakeholders, workers, suppliers and communities concerned.

A European headquartered company talked about how it developed a fair living wage strategy, which will affect around 850,000 textile workers. The company is implementing an industrial relations project in an Asian country in cooperation with a European trade union and the ILO, with the aim to strengthen the structures for industrial relations in the country and increase collective bargaining. The company's CEO has also met with the governments in two Asian countries to engage in a process to identify a living wage level.



Conclusions and Next Steps

Policy

Although the Chinese government has not yet introduced any national policy regarding the implementation of UNGPs at home, and while no government department has made any public reference to the UNGPs in its policies or statements, a policy shift is nevertheless happening, showing an implicit application of the substances of the UNGPs. For instance, since late 2011 and 2012, in terms of the regulation of overseas Chinese investment, the policy focus has shifted from protecting Chinese investment and personnel to guaranteeing social license based on due diligence and localization. The Regulation on Overseas Investment revised by MOFCOM in 2014 explicitly added an article requiring that the investing enterprise shall make sure that the overseas enterprise receiving its investment “abide by local laws and regulation of the host country, respect local custom, fulfil social responsibility, do well in environmental and labour protection, and promote local integration”.

The same trend can be seen in domestic investment regulation. The Interim Measures for the Social Stability Risk Assessment of Major Fixed Asset Investment Projects, made by NDRC in late 2012, demand due diligence on “protection of people’s rights and interest” so as to prevent social stability impacts. It is clear that the need for a more welcoming environment for the investment of Chinese businesses at home and abroad is a key driver for this policy shift.

In addition, almost all sectorial guide/guidance on CSR developed around or after 2011 contain some reference to human rights. In late 2012, the Guidance on Social Responsibility for Chinese Electronic and Information Industry released by the Chinese Electronic Standardization Association (CESA) for the first time in China explicitly referred to the UNGPs. Similarly, a guide from China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters (CCCME) published in 2014 contains a section on human rights, requiring business members to conduct “human rights due diligence”.

Engaging business in the Chinese context

There is a slow but encouraging movement of companies moving from a focus on traditional CSR and philanthropic activities, to beginning to think about addressing impacts on people. There is an emerging sense that looking at issues from a human rights lens could address strategic ‘social license to operate’ issues and business risks. This has been a common observation from the workshops and from the project partners’ experience of working with businesses in China.

The role of government

There is a need for Chinese government policy and guidance on the UNGPs. This is both an observation from the project team broadly, and a theme from the workshop participants. Policy developments from the government reaffirming the corporate responsibility to respect human rights would be beneficial. Businesses in particular are interested in the government providing guidance that can be turned to.

Conclusions and Next Steps

Next Steps

There is strong potential for on-going collaboration between Chinese and other international companies on the issue of business and human rights, in particular when related to material issues such as social license, stakeholder engagement, labour rights, local content and grievance mechanisms. The CRBF and project partners are planning further opportunities for peer-to-peer exchange and in-depth training on business and human rights in 2015 and beyond.

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28 OCTOBER BEIJING WORKSHOP

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China Ocean Shipping Group (COSCO)
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GE China
Hitachi (China)
H&M
HP
Huawei
ICBC
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About the Partners

CRBF is a cooperation project between The Global Compact Network China, Peking University (International Law Institute and Guanghua Management School), Tracktwo, The Institute for Human Rights and Business (IHRB), and The Global Business Initiative on Human Rights (GBI).

The Global Business Initiative on Human Rights (GBI)

www.global-business-initiative.org

The Global Business Initiative on Human Rights (GBI) exists to advance human rights in a business context around the world. The underlying vision is a global community of corporations from all sectors knowing and showing that they respect the dignity and rights of the people they impact and interact with. From a business perspective this supports an enhanced approach to global leadership and risk management, and can provide access to markets, customers and capital. GBI is led by a core group of 18 major corporations headquartered in Asia, Europe, Latin America, Middle East, North Africa and North America.

The GBI work plan is organised into two parallel tracks: First, Member Peer Learning creates a safe space for GBI members to share practices, challenges and innovations with peers focused on respecting human rights in practice and implementation of the UN Guiding Principles on Business and Human Rights. Second, Global Business Outreach focuses on awareness-raising and capacity building for business in diverse regions of the world, particularly in emerging and developing markets.

The Global Compact Network China (GCNC)

www.gcchina.org.cn

GCNC is the local network of UN Global Compact in China. GCNC strives to: promote Chinese companies signing up to the UN Global Compact; propel companies to embrace and implement the ten Global Compact principles in respect of human rights, labor rights, environment and anti-corruption; strengthen the communication and cooperation between Chinese companies and the international community; continuously improve the international status and image of Chinese companies; and promote sustainable development of Chinese companies in the context of economic globalization. In recent years, a large number of both state-owned and private companies have joined the initiative, bringing the total number of Chinese participants to over 300.

The Institute for Human Rights and Business (IHRB)

www.ihrb.org

The Institute for Human Rights and Business (IHRB) is a global centre of excellence and expertise (a think & do tank) on the relationship between business and internationally proclaimed human rights standards. We work to shape policy, advance practice and strengthen accountability to ensure the activities of companies do not contribute to human rights abuses, and in fact lead to positive outcomes.

IHRB prioritizes its work through time-bound programmes that can have the greatest impact, leverage and catalytic effect focusing on countries in economic and political transition, as well as business sectors that underpin others in relation to the flows of information, finance, workers and/or commodities.

About the Partners

Peking University - The International Law Institute and Guanghua School of Management

<http://en.law.pku.edu.cn/>

www.gsm.pku.edu.cn/index/en/index_en.html

Peking University and the International Law Institute are at the forefront of education and research on business and human rights in the Asian context. The International Law Institute of Peking University was the first professional academic institution of international law established in China following the reform and opening-up in the early 1980s and already in 2004, Chinese graduate students could take a course on business & human rights within the university's human rights master program. Today, business and human rights is a research priority at the International Law Institute.

Guanghua School of Management (GSM) has offered a series of courses in the area of corporate social responsibility since 2001. In 2012, the Center for Responsibility and Social Value was established with the aim to integrate the resources of GSM in teaching and in practice, promoting the School to reach new heights in researching social responsibility and cultivating students' values in this area.

Tracktwo

www.tracktwo.se

Tracktwo is a consulting firm specialized in responsible business and sustainable development, established in Sweden in 2011. With consultants based in Stockholm and Beijing, Tracktwo works with companies, government agencies, academic institutions, non-governmental organisations, international organisations and private foundations in China, Sweden and internationally. Tracktwo's name and approach are inspired by Track II diplomacy, an informal kind of diplomacy where independent experts, civil society organisations, academics and former diplomats and officials resolve conflicts through dialogue and collaboration. This is mirrored in how they organise their team of consultants and partner network, which consists of a wide range of expertise and experience from business, academia, government and civil society.

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