



GLOBAL BUSINESS INITIATIVE ON HUMAN RIGHTS

FIVE EARLY RECOMMENDATIONS FOR BUSINESS

Responding to the prospect of an international treaty on Business and Human Rights

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Attentive companies will know that this past summer was an eventful one for business and human rights, in which a process to draft an international treaty on business and human rights was commenced. Momentum and visibility around the treaty process will incrementally pick up in the coming months. Many companies are already on a path to understanding and implementing respect for human rights based on the 2011 [UN Guiding Principles on Business and Human Rights](#) (UNGPs). For them, the message right now is simple – remain focused on implementation and call on States to meet their duties. The UNGPs remain the authoritative international standard and will likely be the basis of any future international project. For companies not yet working actively to implement their responsibility to respect human rights the message is different – it's time to start the journey.

¹ [The Global Business Initiative on Human Rights](#) (GBI) exists to advance human rights in a business context around the world. GBI is led by a core group of 18 major corporations headquartered in Asia, Europe, Latin America, the Middle East, North Africa and North America. GBI focuses on how companies implement corporate respect for human rights, in all industries and in all geographies. Members are committed to knowing and showing that they respect human rights and via honest and pragmatic peer learning, seek to enhance their own efforts, and the efforts of peers. GBI also seeks to support constructive business inputs into the international policy agenda. The views expressed in this article are those of the GBI secretariat and do not necessarily represent the views of, and should not be attributed to, GBI member companies.

BACKGROUND

On 26 and 27 June 2014, the UN Human Rights Council passed two resolutions focused on business and human rights. The first, sponsored by Ecuador and South Africa, provides for the creation of an intergovernmental working group to elaborate a treaty on transnational corporations and human rights. The second resolution, drafted by a long-standing cross regional group comprising Argentina, Ghana, Norway and the Russian Federation, extends the UN Working Group on Business and Human Rights' mandate for a further three years. Our view is that the business community would do well to develop a clear understanding of what happened and did not happen in June. [Please see our FAQ sheet for further information about these developments.](#)

There are now two parallel tracks of work at the UN level – that relating to the treaty process and that of the UN Working Group. Some fear that the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), which were unanimously adopted by the HRC in June 2011, will not be central to both tracks – especially the treaty discussions track - and so are at risk of being undermined. In reality, the resolution calling for the development of a treaty does not say that work on UNGPs should be stopped, and many stakeholders argue that both resolutions are consistent with the trajectory of UNGPs. Despite any discomfort with the complicated nature of an intergovernmental process, and the possible inclination to “wait and see”, companies – and affected communities - will be better off if they continue to focus on implementing the UNGPs and working to achieve, and demonstrate, positive human rights outcomes on the ground. Many companies are already on a path to understanding and implementing respect for human rights using the UNGPs. For them, the message right now is simple – remain focused and engage others, especially States – on their implementation. The UNGPs remain the authoritative global standard, and are likely to be the basis of any future international project.

WHAT SHOULD BUSINESSES DO TODAY?

- 1. Remain focused on implementation. Do not get side tracked by the politics around the treaty drafting process.** Companies should continue to work towards meeting the responsibility to respect human rights as set out in the UNGPs. Nothing in the Ecuador-sponsored resolution suggests otherwise. Recent developments at the UN actually demonstrate on-going and strong State support for the UNGPs, including by every State that voted in favour of commencing a treaty-drafting process. Over the coming years, companies' human rights performance will continue to be assessed by investors, governments, business partners and a large part of civil society with reference to the standard of conduct set out in the UNGPs. If a treaty is agreed, its expectations will likely align substantially with those currently set out in the UNGPs. Accordingly, businesses that have made significant progress to meet the responsibility to respect will be well positioned to meet the expectations of any new or revised regulatory frameworks that emerge. As the UNGPs themselves state, legal developments have to be part of a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights [Commentary to the UNGPs, p.8, A/HRC/17/31]. Furthermore, implementing the UNGPs makes business sense. Many major corporations have publicly shared that they see a clear, long-term business case for respecting human rights that includes improved risk management and compliance, efficiency gains, reduced operational disruption, sustained license to operate, new business models, reduced reputational risk and access to capital and markets. An equally important aspect of UNGPs implementation is that businesses recognise that their efforts are only as strong as the weakest link in the chain. It is not enough for a small collection of companies from a small collection of geographies to implement their corporate responsibility to respect human rights. So companies need to use leverage, capacity-building techniques and inspiration to encourage peers (including competitors in diverse markets) to join the journey and take their responsibility to respect seriously.
- 2. Demonstrate results, however initial or partial, of efforts to implement respect for human rights – and when doing so, be proactive about explaining the benefits of the UNGPs.** The adoption of the treaty-focused resolution came to pass in part from the perception that implementation of the UNGPs has been too slow and that they do not offer sufficient incentive to ensure sustained changes in business practice. Businesses have a legitimate interest in seeking to ensure that the treaty discussions are based on a sound understanding of the value added by the UNGPs, and the progress that has and continues to be made within the UNGPs framework. Sharing information about progress is also

important because it provides insights about the rate at which progress can be realistically expected. Many observers simply don't understand what it takes to bring about genuine organisational change. Accordingly, it will be important that companies seek opportunities to share their experiences and to demonstrate both the steps they are taking and the challenges they have confronted. To validate the value of the UNGPs, companies should also identify opportunities to showcase how the UNGPs have changed mind-sets, strategies, policies, practices and stakeholder relationships. Critically, this will require heads to be put above the parapet wall, often around imperfect or incomplete efforts. We recognise the risk in this, but contend that many companies have excellent stories to tell and will do so if given the correct platform. In order to tell a bigger story, business associations and industry groups should find coordinated ways to aggregate qualitative and quantitative evidence of progress and challenges. Of particular interest will be examples of collaboration with NGOs (local as well as international), workers' organisations, national human rights institutions and governments, in which all actors are applying the UNGPs to achieve good human rights outcomes. Herein lies a challenge to civil society organisations to play their part in avoiding a sense of polarisation. We hope they will be vocal about their own support and application of the UNGPs (even while they or colleagues in the NGO community call for further international legal developments).

3. **Encourage action on the government pillar of the UNGPs, both at home and around the world where they do business.** Companies should seek to identify opportunities to reinforce and support States' work to implement their State Duty to Protect as set out in the UNGPs, including supporting States to devise strategies that lead to positive human rights outcomes and wider up-take by the business community. This could involve requests for regular updates or reports about States' progress on "Pillar 1" implementation (including but not necessarily limited to the development of a [National Action Plan](#)). It could also involve more in-depth efforts such as working collaboratively to devise meaningful State-led commercial incentives (e.g. via public procurement, financing and licensing), supporting capacity of relevant local institutions and collaborating to find local solutions to human rights risks. Certain State actions – such as regulatory developments and mandatory expectations – may present compliance challenges for companies. However, they may also provide clarity regarding expectations, a more level playing field and a chance to progress goals shared by business and government. In such cases, companies should be prepared to evaluate State action against human rights outcomes, not only against the costs of compliance. Engagement with States should occur at all levels - local, national, regional and in multilateral fora. The key message should be a call for consistency and convergence, with the UNGPs as the reference point. This will require coordination within companies, including raising awareness and achieving buy-in from government relations and legal teams, as well as subsidiaries.
4. **Engage constructively on "Access to Remedy", especially via processes that take a multi-stakeholder and evidence-based approach to building solutions.** As a recently released International Organisation of Employers [draft position paper](#) notes: "Only when people have access to justice and remedy when they become victims of human rights violations do the rights themselves become meaningful" and "Insufficient enforcement of human rights and the lack of effective judicial frameworks do not mean that companies can progress with their business activities unimpeded and without restrictions ... rather, it is the opposite". Engaging constructively starts with consistently improving operational level grievance mechanisms and sharing lessons and good practices. Engaging also involves actively participating – directly or via business associations (like the IOE) – with projects being led by various actors. Importantly, companies (in fact all actors) should be willing to argue for rights-based considerations such as due process, accessibility, costs to victims, expediency, good outcomes and reconciliation between parties. Businesses should promote evidence-gathering and capacity building in the space between courts and company-led grievance processes. As a starting point, businesses should connect with projects that focus on rule of law capacity building and non-judicial access to remedy such as mediation and alternative dispute resolution. This is an area where businesses may be able to contribute innovative new ideas to improve remediation, especially where barriers to judicial mechanisms seem insurmountable. All of this extends to encouraging in-house counsel to consider such options when they face allegations or grievances, and to engage proactively with affected rights-holders.
5. **Don't fall off the radar. Have a voice. Recognize that the participation of business leaders and practitioners at international forums makes a difference.** Perceptions of progress made by both States and business under the UNGPs

have a strong influence on the international business and human rights policy agenda, which in turn shapes the business environment. So, it remains important to ensure that business continues to have a confident but considered voice in key discussions and events. A number of obvious opportunities exist, not least the [UN regional forums](#) and the [UN Annual Forum](#) (the third of which is to be held in Geneva on 1 - 3 December 2014). Further, if one is pro-active and well prepared, all of this can support a company to gain knowledge and be well positioned. The Annual Forum can be a chance to forge relationships with leading NGOs, meet with human rights experts who can provide feedback on dilemmas and connect with victims' impacted by one's company or industry. The OHCHR can be a partner in supporting this and is always keen to learn about business participation so they can discuss opportunities to profile business action during panels - business leaders who understand the agenda are in short supply.

...OR START THE JOURNEY!

If a company has not yet taken meaningful and concrete steps to apply the UNGPs in its business, the recent developments should be viewed with a considerable sense of urgency. By endorsing the UNGPs in 2011, States turned a decade-long declaratory CSR trend into a clear international norm; i.e. that every company, of every size, in every industry and from every geography has a responsibility to know and show that they respect human rights. Now is the time to get started in earnest because the interconnected nature of global supply chains means customers and business partners will increasingly be seeking or requiring businesses to demonstrate respect for human rights. And recent developments at the UN mean that governments are also increasingly focused on addressing business-related human rights abuses, and even holding each other accountable for doing so. Even those that are supportive of developing a new international treaty have articulated a very clear commitment to progress the UNGPs in their own jurisdictions.

Even more fundamentally, implementing the UNGPs makes business sense. Since the 1990s, corporations have been faced with an increasingly rigorous and intense imperative to earn their license to operate from a range of stakeholders. Business leaders around the world now realize that responsible and sustainable business goes far beyond legal compliance and philanthropy – the new 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. Many major corporations have publicly shared that they see a clear, long-term business case for respecting human rights that includes improved risk management and compliance, efficiency gains, reduced operational disruption, sustained license to operate, new business models, reduced reputational risk and access to capital and markets. So companies that take action consistent with the UNGPs will have a better market position, regardless of whether or not a treaty is agreed upon.

In conclusion, the message to companies who have been watching from the side-lines or not watching at all is "join the journey". This is not a simple or overnight job. It is not a checklist activity. It is akin to the profound transformations of corporate behaviour we have seen in the areas of health and safety, anti-corruption, and environmental management. If you find it very easy or quick (or discover that everything is in place) then you've probably done it wrong. But at the same time, it is not impossible and should not be overwhelming: companies can respect human rights, as many have begun to demonstrate. And starting with simple steps is better than doing nothing.

Here are three easy steps that every company can take to get started:

1. **Catalogue or map the risks and drivers related to human rights for the business in order to articulate the unique "business case" for the company.** All companies have the potential to have adverse impacts, ranging from issues related to core labour rights, to privacy, to land, to migrant workers, to discrimination and to safety. This can be a simple desk exercise in the first instance. If done honestly and with intellectual rigor, it can reveal some strengths, weaknesses and even glaring gaps. There are ample free resources to support this. For example, visit the [Business and Human Rights Resource Centre's](#) website and search for information/stories about your industry sector, and also use their tools and guidance section. Start with the [General Guidance](#) page where one can download the UNGPs and find 10 excellent resources. CEOs, CFOs and risk management, business development and legal teams

should support this process. It is often the case that senior leaders have the correct mind set and ability to spot risks and opportunities.

2. **Dedicate – by way of senior management commitment - a small budget and staff-time to lead a pilot project focused on applying the UNGPs in practice. To inform this, connect with relevant individuals and experts.** The pilot project could be focused on policy or processes, or relate to a specific business unit, location, supplier group, business relationship, investment or human rights issue or risk. A relevant governance body should scope, resource and review the project - and consider any further recommendations for action. To get ideas, seek out peers or competitors that have made progress on human rights. And seek out well-respected civil society leaders, advisory firms, think tanks, universities or an NGO to benefit from their know-how. If it is not immediately apparent who to connect with, then visit the [international institutions](#) page on the Business and Human Rights Resource Centre's website and send an email. The institutions listed will be able to link you to actors suited to your needs. Informed by this stakeholder engagement, design and implement a pilot project.
3. **Convene senior leaders from diverse business functions to reflect on lessons learned with a view to establishing a road map with short and medium term actions related to respect for human rights.** This could be a single one-day workshop or a series of shorter meetings over the course of a fiscal quarter or year. There is no “one size fits all” formula for defining the business functions that will need to be engaged, and this will depend on the culture and structure of the company. But a sensible starting point would likely include enterprise risk, legal, compliance, and corporate responsibility/sustainability. Importantly, make use of new relationships to input as presenters in these meetings. Consultants and advisors can also be helpful in supporting meeting design, preparation and facilitation. The key message is to make it a collaborative exercise with the relevant internal and external expertise.

In short, as the conversation about new international instruments evolves, it will be tempting to adopt a pro- or anti-treaty position. In our view it is premature to take a stance either way given that the scope and content of a treaty are at present unclear. Companies should certainly be aware of what took place in June at the UN and what steps lie ahead (again, please see our [FAQ](#)). But first and foremost, business leaders should do what they do best - focus on action and results.