INTERNATIONAL TRADE UNION CONFEDERATION

Bd du Roi Albert II, 5, Bte 1 • B-1210 Bruxelles, Belgique
Tel : +32 (0)2 224 02 11 • Fax : +32 (0) 2 201 58 15 • e-mail : info@ituc-csi.org • http://www.ituc-csi.org

The United Nations "Protect, Respect, Remedy"

Framework for Business and Human Rights and the United Nations Guiding Principles for Business and Human Rights

Briefing Note for Trade Unionists

What is the UN 'Protect, Respect Remedy' Framework for Business and Human Rights?

The UN Framework for Business and Human rights is a "conceptual framework" developed to provide a common basis for how to address the issue of business and human rights. It is intended to influence public policy at the international and national levels. The ideas of the Framework can be incorporated into laws, treaties, regulations, CSR activities and company policies. The Framework clarifies the different roles of business and governments as well as the understanding of specific concepts and terms.

The Framework is based on three pillars:

1. The State duty to protect against human rights abuses by third parties, including business;
2. The corporate (business) responsibility to respect human rights; and
3. The need for more effective access to remedies by victims of human rights abuse.

This is formally known as the "UN 'Protect, Respect Remedy' Framework for Business and Human Rights" (referred to here as "the UN Framework") but is often referred to as the 'Ruggie Framework'. (http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf)

The UN Framework was developed and presented to the United Nations Human Rights Council in April 2008 by Professor John Ruggie who had been designated the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations, (referred to here as the" Special Representative").

What are the "Guiding Principles on Business and Human Rights"?

The "Guiding Principles on Business and Human rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" consist of 31 principles intended to "operationalize" the UN Framework. They were unanimously endorsed in June 2011 by the UN Human Rights Council
http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31_en.pdf

Why are "the UN Framework" and the "Guiding Principles" important?

The UN Framework and the Guiding Principles constitute the most significant development in over 30 years with respect to international standards of behaviour for business. The UN Framework was formally welcomed by the UN Human Rights Council in 2008 giving it official status and marking the first occasion that the UN body mandated for human rights adopted substantive policy on Business and Human Rights (http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf). The UN Guiding Principles joins The OECD Guidelines for Multinational Enterprises (The OECD Guidelines) (http://www.oecd.org/dataoecd/43/29/48004323.pdf) and the International Labour Organisation's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (The ILO MNE Declaration) http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf as a third authoritative, non-legally binding international instrument addressing the behaviour of business.

> *[The Guiding Principles are]…the global standard of practice that is now expected of all governments and business with regard to business and human rights. While they do not by themselves constitute a legally binding document, the Guiding Principles elaborate on the implications of existing standards and practices for states and businesses and include points covered variously in international law and practice."* (from the Introduction of "The Corporate Responsibility to respect Human Rights – an Interpretive Guide" Office of the High Commissioner for Human Rights, November 2011. http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf

Many of the most important instruments and initiatives concerning the social responsibility of business have been, or are in the process of being, updated in the light of the UN Guiding Principles. The OECD Guidelines for Multinational Enterprises revised in May 2011 now have a new chapter on human rights based on the Guiding Principles. Just as importantly, they also incorporate the Guiding Principles' concept of due diligence (dealt with later in this Briefing Note) as a general principle setting an expectation for responsible behaviour in areas other than human rights. The International Standard Organisation's (ISO) ISO 26000 standard on social responsibility is fully compatible with the Guiding Principles (http://www.iso.org/iso/discovering_iso_26000-es.pdf) The revision of Global Reporting Initiative's Sustainability Reporting Guidelines scheduled to be completed in 2013 is expected to reflect the Guiding Principles.

The most important ideas

The UN Framework and the Guiding Principles are "game changers" that involve new thinking about business behaviour and corporate social responsibility (CSR).Some of the most important ideas:

The roles of the state and of business are different and independent of each other. States cannot use the power of business as an excuse to not do their duty to protect human rights. Businesses cannot use the failure of the state to protect as an excuse to avoid their responsibility to respect human rights.

The responsibility of business to respect human rights applies to all businesses everywhere and includes all of the internationally recognised human rights. The UN Guiding Principles specifically refer to the ILO Declaration on Fundamental Principles and Rights at Work that is based on the eight ILO fundamental workers' rights conventions.

The responsibility to respect means that businesses "should avoid infringing on the human rights of others and should address adverse impacts with which they are involved."

The expectation of responsible behaviour is that businesses use *"due diligence"* processes to identify, prevent, and mitigate their adverse impacts. In addition businesses have a responsibility to *remediate* any adverse impacts that they cause or that they contribute to.

Businesses also have a responsibility to prevent or mitigate adverse impacts that are directly linked to their operations, product or services by their business relationships even if they have not contributed to those adverse impacts.

The state duty to protect and the business responsibility to respect includes obligation for remedy for the harm caused by the adverse impacts on human rights caused by business.

What these ideas mean

The above ideas have important implications for a lot of things.

A powerful corrective to some of the worst ideas associated with CSR

Business CSR activities cannot substitute for the role of the state which has a distinct role. Responsibility is not a "voluntary concept" and respecting human rights is not "optional" even where it is not legally binding. In the CSR world, the focus is on the "positive contributions" that businesses unilaterally decide to make. In this new thinking, the focus is on the adverse impacts on others that business *must address*. There is no "picking and choosing" of what rights must be respected. Business must respect all internationally recognised human rights. Because the responsibility is over harm caused to others - it is not about the "sustainability" of the company – it is about those affected by the business including those that do not have any other relationship to the business or any interest in the business's success or long-term prospects. They are rights holders whose rights are violated or threatened. There is no "shared responsibility" between business and government – there are distinct roles that are independent of each other. Philanthropy is beyond the scope of the business responsibility to respect human rights. There is no "carbon offset" for violating human rights.

The responsibility for the actions of business relationships

The responsibility of a business is not determined by its "sphere of influence", that is, by its ability to influence other businesses because of its "leverage" but instead the responsibility is determined by the impact of its activities on others. Responsibility of a business does not stop at the "first tier" of its supply chain but extends to all of the adverse impacts that can be directly linked to the operations, products or services of the business. This should lead to profound changes in both the "business led and the "multi-stakeholder" initiatives that deal with supply chain labour practices. The concept of "business relationships is broader than "supply chain" and can encompass the indirect work relationships (for instance agency work and dependent contractors) that are having adverse impacts on increasing numbers of workers and that are imposing obstacles to workers for organising and for collective bargaining.

Due diligence is now the international consensus for responsible business behaviour.

Due diligence refers to various on-going processes – it is not a "tool" to be used when needed and returned to the "toolbox". The processes can be those that seek to identify actual or potential adverse impacts so that they can be avoided or the adverse impact mitigated. The standard is not just "doing no harm" but taking active steps to prevent harm from being done and being able to show what steps were taken. Due diligence means that the steps must be commensurate with the *risk* or likelihood of harm being done and with the *severity* of the possible harm. The responsibility is to address all adverse impacts. This will involve remediation which can mean, among other things, apologies, promises to refrain from harmful behaviour, payment to victims in compensation – and other measures to correct a wrong that has been done. Business must be able to show what steps are taken. These steps can include non-judicial grievance mechanisms which are considered in the Remedy pillar of the Guiding Principles. Trade unionists will want to note that there is a warning that such grievance mechanisms "should not be used to undermine the role of legitimate trade unions".

The next steps

The Guiding Principles do not come with a UN mechanism to consider questions over their meaning, to handle grievances against specific companies, to resolve disputes, or to investigate charges of corporate wrong–doing. The UN Human Rights Council established a five-member Working Group of independent experts with a mandate that includes such functions as promoting the Guiding Principles, identifying and exchanging "best practices" and in making recommendations. The significance of the UN Guiding Principles will not be determined by this follow up procedure but by their influence on other organisations and institutions, on public policy and by the possibilities that are created when they are applied by governments or by business. Their importance should also be seen in the light of establishing preconditions for further progress in the development of global governance institutions – for instance by linking the most important social impacts of economic activity to business behaviour in treaties, in the procedures of international financial institutions and through requirements of export credit agencies and in procurement policies.

Trade Union Action

Trade unions can use the UN Guiding Principles:

- to resolve problems and develop the meaning of due diligence through OECD Guidelines cases and in other intergovernmental mechanisms such as at the IFC;
- to influence government policy and legislation concerning business behaviour;
- to fight precarious work and to demand employment relationships in the supply chain;
- to influence intergovernmental organisations (ILO, World Bank, OECD and others);
- to assess or to change CSR initiatives;

Trade unions can also use the Guiding Principles to engage companies:

- over specific problems
- to broaden the scope of framework agreements;
- to change the framework for social dialogue; to address issues related to precarious work and to supply chain relationships; and
- to assess company policies and non-financial reporting.

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